IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

LETTERS PATENT APPEAL NO. 357 OF 2002

THE MAHALAXMI CO-OPERATIVE)
HOUSING SOCIETY LIMITED)
120, Manmala Tank Road,)
Bombay 400 016.) .. APPELLANT

Vs.

1. DILIP SINGH PAROCHA)

2. SMT. ANGOORI DILIP SINGH)

PAROCHA)

3. SMT. KRISHNA SURESH PAROCHA)
All residing at C/o The)
Mahalaxmi Co-op. Hsg.Society)
Ltd., 120, Manmala Tank Road)
Bombay 400 016.)

4. SHRI A.B. SHAIKH)
Presiding Officer,)
7th Labour Court, Bombay) .. RESPONDENTS

Mr. R.V. Paranjape for appellant
Mr. P.M. Patel for R-1 to 3

CORAM:-SMT. RANJANA DESAI &

SMT. V.K. TAHILRAMANI, JJ.

DATED ON WHICH THE
JUDGMENT RESERVED: 27/09/06

DATE ON WHICH THE
JUDGMENT PRONOUNCED:17/11/06

JUDGMENT:-(Per Smt. Ranjana Desai, J.)

. In this letters patent appeal the appellant has

challenged judgment and order dated 16th August, 2002, rendered by the learned Single Judge of this court in Writ Petition No. 6486 of 1995.

2. Few facts which give rise to the present letters patent appeal may have to be shortly stated;

. The appellant is a co-operative housing society engaged inter alia in the business of Real Estate. The 1st respondent was employed with the appellant as a sweeper since 1961. The 1st respondent filed an application being IDA No. 754 of 1987 in the Labour Court at Bombay under Section 33C(2) of the Industrial Disputes Act,1947 ("the said Act" for short) making monetary claim against the appellant on the ground that the appellant is covered under the Bombay Shops and Establishment Act, 1948 and is, therefore, required to pay the minimum wages payable to him under the Bombay Shops and Establishment Act, 1948. Respondent 1 also claimed other benefits such as weekly off and leave wages, national paid holidays, overtime wages etc.

. The appellant filed its written statement and challenged the maintainability of the said

application, inter alia on the ground that the appellant being a Co-operative Housing Society is not an industry and is not a commercial establishment within the meaning of Section 2(4) of the Bombay Shops and Establishment Act, 1948 and, therefore, the provisions of the said Act are not applicable to it.

3. The Labour Court recorded evidence of the parties and by its judgment and order dated 13/11/95 dismissed the application. The Labour Court inter alia relied on the judgment of the Supreme Court in **Central Inland Water Transport v. The Workman & Anr., (1974) 4 SCC 696**. The Labour Court held that the proceedings under Section 33C(2) of the said Act are in the nature of execution proceedings and in such proceedings it cannot arrogate to itself, the function of an Industrial Tribunal which alone is entitled to make adjudication of the main issue as to whether the appellant is an industry or not. That question can be only decided under Section 10 of the said Act and cannot be decided in execution proceedings.

4. Being aggrieved by this judgment and order, the appellant preferred Writ Petition No. 6486 of 1995

in this court. By the impugned order the learned Single Judge quashed and set aside the impugned order of the Labour Court. The learned Single Judge held that the Labour Court wrongly held that it had no jurisdiction to entertain and try the application filed by the respondent merely because the appellant has raised an issue that it was not an industry. According to the learned Single Judge, since the question whether a person is a workman or not relates to the jurisdiction of the Labour Court, it must be open to that court to decide the facts on which it gets the jurisdiction or the jurisdiction is ousted. The learned Single Judge remanded the matter to the Labour Court for decision in accordance with law. The said order is impugned in this letters patent appeal.

5. We have heard the learned counsel appearing for the parties. Mr. Paranjape, learned counsel appearing for the appellant contended that the learned Single Judge erred in setting aside the well reasoned order of the Labour Court. He submitted that Section 33C(2) postulates pre-existance of employer - employee relationship between the appellant and the respondent and the only dispute that can be decided by the Labour

Court under this section is in a very narrow compass i.e. relating to the computation of quantum of amount of money that may be due. He submitted that when the employer - employee relationship is in dispute the Labour Court while trying the application under Section 33C(2) does not have jurisdiction to determine the said relationship because the said relationship can only be determined on an application under Section 10 of the said Act, that being a substantive issue.

6. Mr. Paranjape further contended that the determination of the question whether there exists a relationship of employer - employee between the parties cannot be termed as "incidental" issue so as to bring it within the scope of execution proceedings under Section 33C(2) Similarly determination of status of an establishment i.e. whether it is an industry or not is also not covered by Section 33C(2). These issues are substantive issues. They are not incidental issues which can be determined in a proceeding under Section 33C(2).

7. Mr. Paranjape contended that in **Som Vihar Apartment Owners Housing Maintenance Society Ltd.**

v. Workmen, (2001 I LLJ 1413, the Supreme Court has held that Co-operative Society is not an Industry within the meaning of Section 2(J) of the Industrial Disputes Act, 1947 and, therefore, the said issue cannot be termed as an incidental issue which required determination. In support of his submissions Mr. Paranjape relied on **Central Inland Water Transport Corporation v. The Workman & Anr., AIR 1974 SC 1604** (2) **P.K. Singh & Ors. v. Presiding Officer & Ors., AIR 1988 SC 1618** (3) **Municipal Corporation of Delhi v. Ganesh Razak, 1995 I CLR 170** (4) **Tara & Ors. v. Director Social Welfare & Ors., AIR 1999 SC 1508** (5) **State of U.P. & Ors. v. Brijpal Singh, 2005 SCC L & S 1081** (6) **RSR Mohta Spinning & Weaving Mills Pvt. Ltd. & Ors. v. Govindrao & Ors., 2001 LAB.I.C 2269 (Bom)** (7) **Central Group & Ors., v. Motiram Thakre, 2005 II LLJ 492 (Bom)**. He submitted that the impugned judgment and order deserves to be set aside.

8. Mr. Patel, learned counsel appearing for the respondent on the other hand submitted that no interference is necessary with the impugned judgment and order. He submitted that in an application under Section 33C(2) the Labour Court's jurisdiction cannot be ousted by raising a mere

plea denying the workman's claim to the money due. The Labour Court has to examine whether it has jurisdiction or not. The defence raised by the employer cannot oust the jurisdiction of the Labour Court.

9. Mr. Patel heavily relied on the Constitution Bench judgment of the Supreme Court in **Central Bank of India's case (supra)**. He also relied **on R.B. Bansilal's case (supra)** where the Supreme Court has held that if the workmen claim lay off compensation but the employer contends that it is not a lay off but closure then the Labour Court has power to decide as to whether it is lay off or closure. Mr. Patel also relied on the judgment of this court in **Ramakrishna Ramnath v. State of Maharashtra, 1975 Labour Industrial Cases 1561**. He pointed out that in this case the Division Bench of this court has held that Labour Court has jurisdiction under Section 33C(2) to decide the issue as to whether there is relationship of employer-employee between the parties. Mr. Patel contended that reliance placed by the appellant on **Tara's case (supra)** is misplaced because that judgment does not indicate what were the facts before the Supreme Court.

10. Mr. Patel further contended that reliance placed on the judgment in **Ganesh Razak's case (supra)** is also misplaced because in that case the Supreme Court was concerned with the case of daily rated casual workers. They wanted themselves to be treated as permanent workmen. They were claiming salary which was paid to the permanent workmen on the principle of equal pay for equal work. They wanted the Labour Court to adjudicate and first decide that they were doing regular work as done by regular workmen and treat them as regular workmen. This exercise is outside the scope of jurisdiction of Labour Court under Section 33C(2). According to Mr. Patel under Section 33C(2) of the said Act the Labour Court has all the power to go into jurisdictional facts and decide whether it has jurisdiction or not. Mr. Patel submitted that when the court decides jurisdictional issue, it does not enlarge and widen its scope. Mr. Patel contended that, therefore, the learned Single Judge was right in setting aside the Labour Court's order.

11. We have given our anxious consideration to the submissions advanced by learned counsel appearing for the appellant and the respondents. They have

taken us through several judgments. We shall soon advert to them. But before we do that it is necessary to quote Section 33C(2) of the said Act. Section 33C(2) reads thus:

> 33C(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government (within a period not exceeding three months)."

12. The scope of section 33C(2) of the said Act fell for consideration before the Constitution Bench of the Supreme Court in **Central Bank of India Ltd. v. P.S. Rajagopalan etc., AIR 1964 SC 743**. The said judgment still holds the field. All later judgments will have to be read in the light of this judgment. We shall, therefore, refer to it.

13. In that case the claim of the respondents was that besides attending to their duties as clerks, they had been operating adding machines and hence they were entitled to special allowance as provided by the Sastry Award. The appellant Central Bank disputed this claim. Three preliminary objections were raised. Firstly it was urged that the respondents could claim only non-monetary benefits under the Award that were capable of computation and so, Section 33C(2) was inapplicable to their claim. Secondly it was argued that without a reference made by the Central Government, the applications were not maintainable. Last preliminary objection was that since applications involved a question of interpretation of Sastry Award, they were outside the purview of Section 33C(2). On the merits also the appellants contested the claim.

14. The Central Government Labour Court overruled the preliminary objections of the appellant and on merits found that the respondents were entitled to claim special allowance. The appellants therefore, approached the Supreme Court. The basic argument of the appellants before the Constitution Bench was

that the Labour Court had exceeded its jurisdiction in entertaining the applications because the claim made by the respondents was outside the purview of Section 33C(2). It was urged that,if there is a dispute about the workman's right to claim the benefit, that has to be adjudicated upon not under subsection 2, but in other appropriate proceedings permissible under the said Act and since the appellant has disputed the respondent's right to claim the special allowance, the Labour Court had no jurisdiction to deal with their claim.

15. While dealing with this submission the Constitution Bench traced the history of the relevant provisions of the said Act. It was observed that the said Act as it was originally passed, made relevant provisions on the broad basis that industrial disputes should be adjudicated upon between trade unions or representatives of labour on the one hand and the workmen's employers on the other and that is why Section 10(1) which deals with the reference of disputes to Boards, Courts or Tribunals, has been interpreted by the Supreme Court to mean that the disputes which are referable under Section 10(1) should be disputes which are raised by the trade unions to which the workmen

belong or by the representatives of workmen acting in such a representative character. The Constitution Bench observed that the legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights and so, it inserted Section 33A in the said Act in 1950 and added Section 33C in 1956. These provisions, observed the Constitution Bench, illustrate the cases in which individual workmen can enforce their rights without having to take recourse to Section 10(1) of the said Act or without having to depend upon their union to espouse their cause. The Constitution Bench laid down two important considerations which must be borne in mind while construing Section 33C of the said Act. We may quote the relevant observation of the Constitution Bench.

> "Therefore, in construing S. 33C we have to bear in mind two relevant considerations. The construction should not be so broad as to bring within the scope of S.33-C case which would fall under S. 10(1). Where industrial disputes arise between employees acting collectively and their employers, they

> must be adjudicated upon in the manner prescribed by the Act, as for instance, by reference under S.10(1). These disputes cannot be brought within the purview of S.33C. Similarly, having regard to the fact that the policy of the Legislature in enacting S.33C is to provide a speedy remedy to the individual workmen to enforce or execute their existing rights, it would not be reasonable to exclude from the scope of this section cases of existing rights which are sought to be implemented by individual workmen. In other words, though in determining the scope of S. 33C, we must take care not to exclude cases which legitimately fall within its purview, we must also bear in mind that cases which fall under S.10(1) of the Act for instance, cannot be brought within the scope of S.33C."

16. The Constitution Bench rejected the argument that, if a dispute is raised about the workman's right to receive the benefit in question, that dispute cannot be determined by the Labour Court

under Section 33C(2). The Constitution Bench held that on a fair and reasonable construction of subsection (2) it is clear that if a workman's right to receive the benefit is disputed that may have to be determined by the Labour Court and a contrary view would mean that it would be at the option of the employer to allow the workman to avail himself of the remedy provided by subsection (2), because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court to entertain the workman's application. The Constitution Bench further observed that the claim under Section 33C(2) clearly postulates that the determination of the question about computing the benefit in terms of money may, in some cases, have to be preceded by an enquiry into the existence of the right and such an enquiry must be held to be incidental to the main determination which has been assigned to the Labour Court by subsection (2). It was held that Section 33C(2) takes within its purview cases of workmen who claimed that the benefit to which they are entitled should be computed in terms of money, even though the right to the benefit on which their claim is based is disputed by their employers.

17. The Constitution Bench clarified that if an employee is dismissed or demoted and it is his case that the dismissal or demotion is wrongful, it would not be open to him to make a claim that the dismissal or demotion is unlawful and, therefore, he continues to be the workman of the employer and is entitled to the benefits due to him under a pre-existing contract. It was further clarified that, it would not be open to an employee, notwithstanding a settlement, to claim the benefit as though the said settlement had come to an end. If the settlement exists and continues to be operative, no claim can be made under Section 33C(2) inconsistent with the same. If the settlement is intended to be terminated prior steps may have to be taken in that behalf and a dispute that may arise thereafter may be dealt with according to the other procedure prescribed by the said Act.

18. In **R.B. Bansilal Abirchand Mills Co. Pvt. Ltd. v. The Labour Court, Nagpur & Ors., AIR 1972 SC 451**, the Supreme Court was concerned with the question whether if a claim is made on the basis of a lay off and the employer contends that there was

no lay-off but closure, it is open to a Labour Court to entertain an application under Section 33C(2). The Supreme Court held that the Labour Court must go into the matter and come to a decision as to whether there was really a closure or a lay off and if it took the view that there was a lay-off without any closure of the business it would be acting within its jurisdiction, if it awarded compensation in terms of the provisions of Chapter V-A. The Supreme Court further observed that the Labour Court's jurisdiction could not be ousted by a mere plea denying the workman's claim to the computation of the benefit in terms of money; the Labour Court had to go into the question and, determine whether, on the facts, it had jurisdiction to make the computation. It could not however, give itself jurisdiction by wrong decision on the jurisdictional plea. In this case the Supreme Court relied on the Constitution Bench judgment in **Central Bank of India's case (supra)** and quoted extensively from it.

19. In **Central Inland Water Transport Corporation Ltd. v. The Workmen (1974) 4 SCC 696: (1974 Lab IC 1018**) the question before the Supreme Court was whether the Labour Court had jurisdiction to deal

with the question as to whether the undertaking of the Company had been transferred to the Corporation and if so, whether the settlement of August 25, 1965 between the Company and the Union was binding on the Corporation. The second issue was whether employees who were parties to the said settlement were entitled to continue in the employment of the Corporation and, if so what amount they were entitled to and whether said amount was recoverable from the Corporation. The third issue was whether 92 employees in list No. II who were parties to the said settlement were entitled to get compensation under S. 25FF of the said Act and, if yes, what was the amount to which they were entitled.

20. The Supreme Court referred to the Constitution Bench judgment in **Central Bank's case**. The Supreme Court held that proceedings under S.33C are analogous to execution proceedings. It compared them to execution proceedings of a suit. It observed that in a suit a claim for relief made by the plaintiff against the defendant involves an investigation directed to determination of (i) the plaintiff's right to relief, (ii) the corresponding liability of the defendant, including whether the

defendant is at all liable or not, and (iii) the extent of the defendant's liability if any. In execution proceedings liability of the defendant has to be worked out. The extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But the determination of the plaintiff's right and corresponding liability is not to be left to the execution proceedings. The Supreme Court made it clear that they are functions of a suit. The Supreme Court further held that since proceedings under S. 33-C (2) are in the nature of execution proceedings, looking into the applicant's rights and the opponents liability is outside the scope of the Labour Court's jurisdiction. In a given case, it may be necessary to determine the identity of the person against whom the claim is made, if there is challenge. But that is merely incidental. It is only incidental question which can be gone into by the Labour Court and it cannot arrogate to itself functions, say of an Industrial Tribunal.

21. The Supreme Court went on to consider what is incidental. The Supreme Court observed that when the workman comes before the Labour Court for computation of his wages under S.33C(2), he cannot

ask the Labour Court to disregard his dismissal as wrongful and on that basis compute his wages. Determination as to whether dismissal was justified or not would be the principal matter for adjudication and computation of wages was consequent upon such adjudication. Determination of existing right is not what the Labour Court can take upon itself under S.33C(2).

22. In **P.K. Singh & Ors. v. Presiding Officer & Ors., AIR 1988 SC 1618**, the workmen filed applications under Section 33C(2) of the said Act for computation of wages payable to them. They claimed that even though they had been engaged as C-Grade fitters they were entitled to the salary allowances payable to B-Grade fitters. The management contested the claim stating that the applications were not maintainable as they involved reclassification of the workmen which could not be done under Section 33C(2).

23. The Supreme Court held that if the claim of the workmen was that they had been actually promoted to B-Grade fitters cadre and that the Management had denied that there was such a promotion, the Labour Court would have been under

an obligation to determine whether there was such a promotion or not. But under Section 33C(2), the workers engaged as C-Grade Fitters cannot claim salary of B-Grade Fitters because they have no existing right to it unless they are promoted to that post. The workmen, therefore, cannot ask the Labour Court under Section 33C(2) to do reclassification. The Supreme Court observed that it would be open to the workmen, however, if they so desire to seek a reference of the question whether they are entitled to be treated as E-Grade Fitters under Section 10 of the said Act. While arriving at this conclusion the Supreme Court relied on the Constitution Bench Judgment in **Central Bank of India's case (supra)**.

24. In **Municipal Corporation of Delhi v. Ganesh Razak & Anr., 1995 1 CLR 170**, the respondents claimed to be daily rated/casual workers of the appellant Municipal Corporation of Delhi. They claimed that they were doing the same kind of work as the regular employees and, therefore, they were required to be paid by the appellant the same pay as the regular employees. Their applications made under Section 33C(2) to the Labour Court were allowed. Writ Petition filed by the appellant was

dismissed by the Delhi High Court. Hence the appellant approached the Supreme Court.

25. The Supreme Court held that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of proceedings under Section 33C(2) of the said Act. It is only when the entitlement has been earlier adjudicated or recognized by the employer and thereafter for the purpose of implementation or enforcement thereof, some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33C(2) like that of the executing Court's power to interpret a decree for the purpose of its execution. The power of the Labour Court under Section 33C(2) extends to interpretation of the Award or settlement on which the workmen's right exists.

26. The Supreme Court referred to the Constitution Bench judgment in **the Central Bank of India's case (supra)** and observed that that decision itself

indicates that the power of the Labour Court under Section 33C(2) extends to interpretation of the award or settlement on which the workman's right rests, like the executing court's power to interpret the decree for the purpose of execution, where the basis of the claim is referable to the award or settlement, but it does not extend to determination of the dispute of entitlement or the basis of the claim, if there be no prior adjudication or recognition of the same by the employer.

27. On facts the Supreme Court held that the claim of the respondents to be paid at the same rate as the regular workers, had not been earlier settled by adjudication or recognition by the employer and, therefore, there could be no occasion for computation of the benefit on that basis to attract Section 33-C-(2). The Supreme Court thus allowed the appeals holding that the respondents' applications were not maintainable.

28. In **Tara & Ors. v. Director, Social Welfare & Ors., AIR 1999 SC 1508**, placing reliance on **Ganesh Razak's case (supra)** the Labour Court had held that the application made by the appellant under Section

33C(2) for payment of wages at the rate claimed by him was not maintainable. The Supreme Court confirmed this view. The Supreme Court observed that the status and nature of employment of the appellant is itself disputed and unless there is a prior adjudication on merits of the status which is the foundation for making the claim for wages at the specified rates, the question of moving an application under Section 33C(2) does not arise. The Supreme Court further observed that the question of maintainability of the applications under Section 33C(2) was required to be determined at the threshold and the question of examining the appellant's claim on merits relating to their status could have been gone into only thereafter, if the applications were held to be maintainable under Section 33C(2). Since the facts of this case are not narrated by the Supreme Court in detail, we are unable to hold that, it supports the appellant's contentions.

29. In **State of U.P. & Anr. v. Brijpal Singh 2005 SCC (L & S) 1081** the services of the respondent were terminated. He filed writ petition in the High Court. The appellants contested his claim. They submitted that the respondent had

never attended the office and he was not entitled to pay. The said petition was pending. The respondent filed Misc. Case No. 11 of 1993 before the Labour Court for salary and bonus. The Labour Court directed the appellants to pay the respondent as per his claim. The appellant filed writ petition in the High Court challenging the Labour Court's order and contending that under Section 33C(2) of the said Act, the Labour Court had no jurisdiction to pass such order. The High Court dismissed the said writ petition holding that the respondent was entitled to salary and bonus so long as the writ petition filed by the respondent challenging the termination order was decided by the High Court. Aggrieved by this judgment the appellants approached the Supreme Court.

30. The Supreme Court did not refer to the Constitution Bench decision in **Central Bank of India's case** but it referred to **Ganesh Razak's case (supra)** and held that the Labour Court cannot arrogate to itself the functions of an Industrial Tribunal and entertain the claim made by the respondent which is not based on an existing right but which may appropriately be made the subject matter of an industrial dispute in a reference

under Section 10 of the said Act. It was held that the respondent workman cannot ask the Labour Court in an application under Section 33C(2) of the said Act to disregard his dismissal as wrongful and on that basis compute his wages. The Supreme Court set aside the order of the Labour Court as also order of the High Court. In our opinion, the appellant cannot draw any support from this judgment because the workman wanted the Labour Court to disregard his dismissal as wrongful. Such enquiry is not open to the Labour Court while dealing with application under Section 33C(2) of the said Act.

31. We shall now refer to the judgments of this court to which our attention is drawn by the learned counsel.

32. In **Ramkrishna Ramnath v. The State of Maharashtra, 1975 Labour and Industrial Cases 1561**, by a notification the Government had fixed the minimum wages payable to the employees in bidi making industry. The petitioner who owned a bidi factory declared intention to close down the factory. The factory was closed temporarily from July 1958 till August 1958. Respondent No. 3 was

not taken back on work after it was reopened. She applied to the Labour Court at Nagpur under Section 33-C-(2) of the said Act alleging that she was in the employment of the petitioner as a bidi binder. She claimed retrenchment compensation and notice pay.

33. The petitioner denied the claim. The petitioner inter alia contended that respondent No. 3 was binding bidies on contract basis as a piece rated worker and that there was no relationship of master and servant between the parties. The Labour Court had no jurisdiction under Section 33C(2) of the said Act to entertain the application of respondent No. 3.

34. This Court referred to the judgment of the Supreme Court in **Central Inland Water Transport Corporation Limited's case (supra)** where the Supreme Court has discussed the nature of execution proceedings in a suit and held that the plaintiff's right to relief and the corresponding liability of the defendant including whether he is liable or not is outside the scope of execution proceedings. But making out extent of the defendant's liability with a view to giving relief is generally the function

of an execution proceeding. This court noted the observation of the Supreme Court that since Section 33C(2) proceedings are in the nature of execution proceedings, investigation into the right of the employee to relief and the corresponding liability of the employer cannot be gone into by the Labour Court but it may be necessary to determine the identity of the person by whom or against whom the claim is made and, if there is challenge on that score it is merely incidental. This court referred to the Supreme Court's observation that in an execution proceeding where the judgment debtor challenges the capacity of the decree holder to take a proceeding for execution, the executing court can go into the question whether the person invoking the jurisdiction is entitled to initiate the proceedings and if so, whether he is entitled to the relief asked for and on the same analogy, therefore, where the right of a person to apply to the Labour Court under Section 33C(2) is challenged on the ground that it does not satisfy the basic qualification or the condition precedent for invoking the jurisdiction of the Labour Court, the question of title or the status of the person so applying is an incidental matter and it will be competent for the Labour Court under Section 33C(2)

to enquire into the question whether the person invoking its jurisdiction is a workman or not within the meaning of the said Act. In the light of these observations of the Supreme Court, this Court observed that by enacting Section 33C(2), the Legislature wanted to provide for a speedy remedy to an individual workman working out his existing right. If on a mere raising of the objection by the employer that the employee who has filed an application under Section 33C(2) is not a workman, the Labour Court is divested of the jurisdiction vested in it under the provision, the very object of Section 33C(2) would be frustrated by the employer. The jurisdiction of the Labour Court cannot be ousted merely by disputing the status of the person invoking it. When the basic jurisdictional fact necessary for the exercise of the jurisdiction of the Labour Court is in issue, the question of status of the person applying under Section 33C(2) becomes an incidental matter and hence the Labour Court can inquire into that question.

35. In **R.S.R. Mohata Spinning & Weaving Mills Pvt. Ltd., Hinganghat & Ors. v. Chintaman Govindrao & Ors., 2001 LAB I.C. 2269**, one of us

(Smt. Ranjana Desai, J.) was concerned with the same question. The applicants therein had filed applications before the Labour Court under Section 33C(2) claiming that they were engaged by non-applicant-2 which was originally a part and parcel of non-applicant-1. The management of both the plants was previously the same but later on the two plants were separated. According to the applicants, the wages and benefits payable to the employees engaged in non-applicant-2 were much low as compared to wages payable to employees of non-applicant-1. According to the applicants their strength was deceptively used for non-applicant-1 through non-applicant-2 and non-applicant-1 was paying very meagre wages to them. They, therefore, claimed difference of wages and other legal dues and benefits. The non-applicants disputed the applicants claim. They disputed the employer - employee relationship. It was contended by them that the claim of the applicants is not maintainable under Section 33C(2) of the said Act as the Labour Court cannot go into the disputed questions raised by the non-applicants. This court observed that if there is any attempt to oust jurisdiction of the Labour Court by merely denying employer - employee relationship then such an

attempt must not be allowed to succeed. It was observed that if a frivolous plea is raised by the employer to drive the employee to another spate of litigations the Labour Court in its limited jurisdiction as an executing court can go into the said question as an incidental question. It was further observed that whether a question is incidental or not would be essentially a question of fact. In the facts of the case before it this court observed that it was not inclined to hold that the said question was an incidental question. It was observed that the applicants has gone to the court with the case that they are employees of non-applicant-1. This was denied by the non-applicants by filing written statement running into several paragraphs in which the case of the applicants was traversed. It was denied that non-applicant-2 was part and parcel of non-applicant-1. It was stated that non-applicant-1 and non-applicant-2 are separate and distinct companies having different business and working conditions for the workers. This court observed that several disputed questions of facts were involved in that cases. It is against the background of these facts that this court observed that it was not an incidental question and,

therefore, the Labour Court clearly erred in passing the award.

36. In **Central Group & Ors. v. Motiram Thakre (2005 2 LLJ 492**, the learned Single Judge of this court was dealing with two petitions. In both the petitions employees had moved applications under Section 33C(2) of the said Act claiming certain dues. Objections were raised to the maintainability of the said applications on the ground that under Section 33C(2) the Labour Court could not decide the question whether employer - employee relationship exists between the parties and whether the employee had any right to claim the dues.

37. The labour court held that it had jurisdiction to decide the said issues as "incidental" issues. The learned Single Judge observed that in one petition there was not only a mere denial of employer - employee relationship but the very right to claim the dues and benefits was disputed and denied. He observed that admittedly there was no prior adjudication in respect of the right, nor any settlement or admission on the part of the employers placed on record and, therefore, the

Labour Court could not have proceeded to adjudicate the issue relating to the status of the employer and the right of the employee as it was beyond the scope of Section 33C(2). The learned Single Judge observed that in the other writ petition also the employer had denied the employer - employee relationship. The learned Single Judge found that there was no substance in the contention regarding absence of relationship. However, so far as the claim for overtime wages is concerned, there was neither any adjudication in respect thereof nor any admission in that regard by the employer and, therefore, the Labour Court had exceeded its jurisdiction in dealing with the matter under Section 33C(2) of the said Act. The learned Single Judge held that the judgment of this court in **Ramakrishna Ramnath's case (supra)** is no longer a good law in view of the Supreme Court's decision in **Tara's case (supra)**. The learned Single Judge held that issues relating to status of the employee cannot be adjudicated upon by the Labour Court. On the assumption that it is an "incidental" issue, he held that the presence of employer - employee relationship is a jurisdictional fact, the existence of which is very much essential for the Labour Court to assume jurisdiction to deal with

the proceeding under Section 33C(2) of the said Act. The learned Single Judge held that the Labour Court while dealing with the application under Section 33C(2) of the said Act cannot deal with the issue relating to the status of the applicant as the workman and such an issue is not an incidental issue in such proceedings but it relates to jurisdictional fact and in the absence of such jurisdictional fact, the Court is not empowered to entertain the application under Section 33C(2) of the said Act.

38. Before we proceed further, we must make it clear that with respect, we are unable to agree with the learned Single Judge that the judgment of this court in **Ramkrishna Rawat's case (supra)** is no longer good law. **Ramkrishna Rawat's cas**e (supra) is in tune with the Constitution Bench judgment in **Central Bank of India's case (supra)** and also in tune with the Supreme Court's judgment in **Central Inland Water Transport Corporation Limited's case (supra)** and, we respectfully concur with that view. The Constitution Bench judgment has obviously to be followed as the authoritative pronouncement on the question involved here. It is followed in all later judgments. We feel that a common thread runs

through all the judgments cited before us.

39. We must make a detailed reference to **Ganesh Razak's case (supra)** as heavy reliance is placed on it by the appellant. In our opinion, this judgment does not help the appellant. In that case, the respondents were daily rated workers of the appellant therein. They claimed that they were doing the same kind of work as the regular employees and, therefore, they were required to be paid by the appellant the same pay as the regular employees on the principle of equal pay for equal work. The appellant therein challenged the maintainability of the proceedings under Section 33C(2) of the said Act, on the ground that the claim of the workmen to be paid at the same rate being disputed, proceedings under Section 33C(2) were not maintainable. The Supreme Court held that there was no adjudication by any forum of the claim of the workmen of their entitlement to be paid wages at the same rate as regular workmen. There was no award for settlement and, therefore, there could be no occasion for computation of the benefit on that basis to attract Section 33C(2). It is pertinent to note that, no submission was made before the Supreme Court that there was any attempt

by the employer to oust the jurisdiction of the Labour Court by raising a frivolous plea. It is against the backdrop of the facts before it and submissions advanced before it that though the Supreme Court accepted that incidental questions can be decided under Section 33C(2), it went on to hold that if entitlement of a workmen is adjudicated upon earlier and if any interpretation of the Award of Settlement is required, that would be an incidental question. In the circumstances we are of the opinion that in this judgment the Supreme Court has not departed from the view taken by the Constitution Bench in **Central Bank of India's case (supra)** after taking into consideration the legislative intent.

40. From the judgments of the Supreme Court and of this Court to which we have made a reference following propositions emerge:-

a) The legislature recognised that individual workmen should be given a speedy remedy to enforce their existing individual rights and so it inserted Section 33C in the said Act in 1956. By resorting to Section 33C individual workmen can enforce their rights without having to take recourse to Section

10(1) of the said Act or without having to depend upon their union to espouse their cause.

b) There is no bar preventing a Labour Court dealing with an application under Section 33C(2) of the said Act from determining the workmen's right to receive benefit if it is disputed by the employer.

c) This view is consistent with the legislative intent and a contrary view would mean that it would be at the option of the employer to allow the workmen to avail himself of the remedy provided by Subsection (2) of Section 33C because he has merely to raise an objection on the ground that the right claimed by the workman is not admitted to oust the jurisdiction of the Labour Court, to entertain the workman's application.

d) In some cases determination of the question about computing the benefit in terms of money may have to be preceded by an enquiry into the existence of the right, and such an enquiry must be held to be incidental.

e) Whether such inquiry is incidental or not will

depend on the facts and circumstances of each case.

f) When Labour Court's jurisdiction is sought to be ousted by raising objection to it, the Labour Court will have to examine whether it has jurisdiction or not. In such a situation the question of status of the person applying under Section 33C(2) becomes an incidental matter and the Labour Court can enquire into that matter.

g) In a given case it may be necessary to determine the identity of the person against whom the claim is made if there is challenge and such determination would be incidental.

h) Interpretation of an Award or a Settlement on which the workman's right exists is incidental to the Labour Court's power under Section 33C(2).

i) Under Section 33C(2) the Labour Court cannot be asked to disregard the dismissal of the workman as wrongful and on that basis compute his wages.

j) Under Section 33C(2) the workman cannot claim that his dismissal or demotion is unlawful and, therefore, he continues to be the workman of the

employer and he is entitled to the benefits due to him under a pre-existing contract.

k) Under Section 33C(2), it would not be open to an employee, notwithstanding a settlement, to claim the benefit as though the said settlement has come to an end.

l) If the workman makes his claim on the basis of a lay off and the employer raises a plea that there was no lay off but closure, the Labour Court must decide as to whether there was really a lay off or a closure and if it takes the view that there was a lay off without any closure of the business, it would be acting within its jurisdiction if it awarded compensation in terms of the provisions of Chapter V-A. In such a situation the plea raised by the employer is a jurisdictional plea and the Labour Court has to decide whether it has jurisdiction to make the computation. Thus, jurisdictional pleas will have to be decided by the Labour Court.

m) If the workers claim that they had been actually promoted to a particular cadre and the management denies the promotion the Labour Court can decide

whether there was such a promotion or not it being an incidental question, but under Section 33C(2) the Labour Court cannot reclassify the workers.

n) While dealing with an application under Section 33C(2) the Labour Court has to keep the legislative intent in enacting this provision in mind. It must adopt a cautious approach and it must not allow an attempt to oust the jurisdiction of the Labour Court by raising frivolous plea succeed for that would mean driving the workman unnecessarily to another forum. In such cases it will have to conduct incidental inquiry to determine the identity of the person against whom the claim is made and the person who makes the claim. Nature of incidental inquiry will obviously depend on facts and circumstances of each case.

41. We will examine the present case in the light of the above propositions. The appellant contended that it is not an industry and that there was no employer employee relationship between the appellant and the respondent. The Labour Court allowed the parties to lead evidence and observed that the issues raised by the appellant cannot be called incidental issues and a full dressed trial

is required to adjudicate these issues. The Labour Court observed that unless and until those questions are adjudicated upon by a competent authority it was not open for the Labour Court to decide them in 33C(2) proceedings because those issues are the predominant and perennial issues which require adjudication by a competent court. In this connection Labour Court placed reliance on the judgments of the Supreme Court in **Central Inland Water Transport's Case (Supra)** and **P. K. Singh's case (supra)**. The Labour Court further observed relying on the judgment of the Kerala High Court in **Divisional Personnel Officer, Southern Railway, Palghat V/s. P. Ramchandren & Anr, 1991, 11 CLR 364** that Section 33C(2) of the said Act gives only a limited jurisdiction to decide certain disputes between the employer and the employee but if any complicated question relating to entitlement of the employee is involved, the said controversy cannot be adjudicated upon in proceedings under Section 33C(2). The Labour Court observed that there was no reliable evidence before it to come to a conclusion that there was employer and employee relationship between the appellant and the respondent. In the circumstances, the Labour Court dismissed the application, without giving any

conclusive finding on the issues raised, but holding that the said issues were not incidental issues and a full dressed trial was required to adjudicate them. In our opinion the Labour Court erred in doing so.

42. The Labour Court has overlooked the fact that this is a case where individual workmen are trying to enforce their rights individually. Dispute is not raised by the union. The respondents are sweepers working with the appellant. Therefore, any possible attempt to oust the jurisdiction of the Labour Court by raising a frivolous plea must be guarded against. The speedy remedy available to the workmen must not be allowed to be frustrated by driving them unnecessarily to another forum. The Labour Court has not applied it’s mind to this aspect.

43. The appellant has raised jurisdictional pleas. It claims to be an industry. It has denied employer employee relationship. To find out whether the plea is genuine and whether there is an attempt to oust the jurisdiction of the Labour Court, the Labour Court will have to conduct incidental inquiry. In this case the determination

of the question about computing the benefit to be claimed by the workmen will have to be preceded by an inquiry into the issues raised by the appellant. The status of the respondent workmen and determination of identity of the appellant is incidental matter which the Labour Court must examine.

44. In our opinion the Labour Court has not properly appreciated the ratio of the Supreme Courts judgments in **Central Inland Water Transport Company's case (supra)** and in **P. K. Singh's case (supra)**. The facts of those cases are not comparable to the facts of the present case. In this case the Labour Court was not called upon to consider whether the dismissal of the workmen was justified or not. The respondent workmen only claim to be the workmen of the appellant. They claim that they are covered by the Bombay Shops and Establishments Act 1948. They claim benefits of weekly off, privilege leave, national paid holidays etc. To this case the above judgments of the Supreme Court are not applicable.

45. We are of the considered opinion that since the jurisdiction of the Labour Court is in issue, in the facts of the present case the status of the

appellant and the respondent becomes an incidental matter. Having allowed the parties to lead evidence the learned judge should have given his verdict on the incidental questions involved in this case one way or the other. The learned Single Judge has rightly held that if the Labour Court had come to a conclusion that the appellant is not an industry it could have rejected the application. But it must determine the incidental questions. We find the impugned order of the learned Single Judge to be perfectly legal. It calls for no interference. Hence letters patent appeal is dismissed.

(SMT. V.K. TAHILRAMANI,J.) (SMT. RANJANA DESAI, J.)